



U.S. Department of Justice

United States Attorney
Southern District of New York

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April 25, 2022

Via ECF

Honorable Andrew L. Carter, Jr.
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

MEMO ENDORSED

Re: *Chemoil Corp. v. United States of America*, 19 Civ. 6314 (ALC) (KNF)

Dear Judge Carter:

This Office represents the United States of America (the “United States” or the “government”), the defendant in the above-referenced tax-refund case brought by plaintiff Chemoil Corporation (“Chemoil”). We write respectfully to provide a status update containing both parties’ views on how the litigation should proceed at this stage.

The United States’ position

In late July 2021, Chemoil submitted a settlement demand for the United States’ consideration. After review by the Department of Justice, Tax Division, and the Internal Revenue Service, as required for the government to respond, in mid-December 2021, the United States informed Chemoil that it had been authorized to begin substantive settlement discussions, with the understanding any eventual agreement would ultimately have to receive formal approval from senior officials at the Department of Justice, and the United States responded to Chemoil’s demand with a counteroffer.

Since December, the parties have continued to confer on a number of occasions, but Chemoil has not responded to the United States’ counteroffer. Notably, Chemoil has declined to commit to providing a response despite the Government’s requests. While the United States remains open to settlement, it believes that, with no response to its counteroffer after approximately four months, nor a commitment to provide a response in the near future, settlement discussions have stalled. Accordingly, we respectfully propose to begin summary judgment briefing on the following schedule:

- Chemoil’s motion: **June 13, 2022**
- The United States’ combined response and cross-motion: **July 25, 2022**
- Chemoil’s combined opposition and reply: **August 15, 2022**
- The United States’ reply: **September 1, 2022**

The United States believes that, as is customary, Chemoil, the plaintiff in this case, should move first, as it brought this case and bears the burden of proof to show that it is entitled to the tax credits it seeks. For this reason, the United States does not believe that Chemoil's counter-proposal that the United States should file its summary judgment motion first is appropriate.

Moreover, it is the United States' position that a staggered schedule will lead to "more responsive briefing" than a "blind, simultaneous [set] of cross-motions on the same issues," and will be most efficient by reducing the total number of briefs to be filed. *Stand Up for California v. U.S. Dep't of Interior*, No. 16 Civ. 2681, 2017 WL 10620368, at *2 (E.D. Cal. Mar. 8, 2017); cf. Fed. R. App. P. 28.1(c) (specifying use of staggered briefing for cross-appeals).

Chemoil's position

Chemoil disagrees with the United States' view that settlement discussions have stalled. The United States took a considerable amount of time – nearly five months – to respond to Chemoil's opening settlement offer, which was made in late July 2021. Since receiving a counteroffer from the United States in mid-December 2021, Chemoil has been actively considering next steps in this case. As the United States notes above, the parties have continued to confer regarding settlement on a number of occasions. Further, in late March 2022, in response to the United States' counteroffer and in an effort to further settlement discussions, Chemoil presented to the United States more detailed, written explanations of its legal positions regarding two of the United States' arguments. Chemoil conferred with the United States regarding those materials at the beginning of April 2022. Since that time Chemoil has been considering a further response to the United States' counteroffer, and has informed the United States that it intends to get back to them shortly.

Chemoil believes that it would be premature to set a summary judgment briefing schedule at this time, given that settlement negotiations are still ongoing. Further, consistent with the Court's comments during the last status conference in this case, Chemoil is interested in exploring ways to resolve the disputed issues in the case that may be more efficient than summary judgment briefing. Nevertheless, if the Court is inclined to set a summary judgment briefing schedule now, as the United States requests, Chemoil respectfully submits that the United States should file its motion first. As the United States is the party currently asking for a briefing schedule to be set, it is reasonable for the United States to file first. Further, Chemoil is not aware of any authority, and the United States has cited to none, which requires the plaintiff in a case to be the first to file a summary judgment motion. Chemoil therefore respectfully proposes the following summary judgment briefing schedule, should the Court be inclined to order one:

- The United States' motion: **June 13, 2022**
- Chemoil's combined response and cross-motion: **July 25, 2022**
- The United States' combined opposition and reply: **August 15, 2022**
- Chemoil's reply: **September 1, 2022**

Should the Court prefer simultaneous briefing, Chemoil proposes the following alternative schedule:

- The parties' cross-motions: **July 1, 2022**
- The parties' opposition briefs: **August 12, 2022**
- The parties' reply briefs: **September 2, 2022**

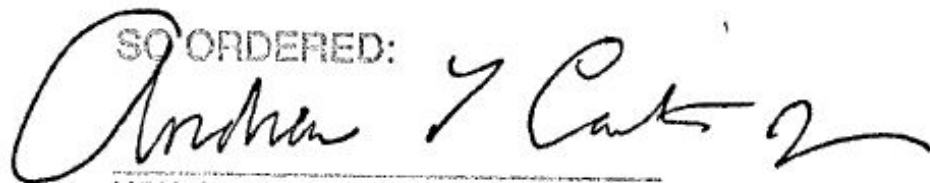
We thank the Court for its consideration of this request.

Respectfully submitted,

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cc: Counsel for Chemoil (via ECF)

SO ORDERED:


HON. ANDREW L. CARTER, JR.
UNITED STATES DISTRICT JUDGE
Dated: 4/26/2022